IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.8143 of 2005**

DATE OF DECISION: October 19, 2006

BHAKRA BEAS MANAGEMENT BOARD,
NANGAL TOWNSHIP (PUNJAB) ...PETITIONERS

VERSUS

JAGDISH CHANDER AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MRS. JUSTICE NIRMAL YADAV.

PRESENT: MR. D.S. NEHRA, SR. ADVOCATE WITH
MR. P.K.DUTT, ADVOCATE FOR THE PETITIONERS.
MR. MANJEET PATHANIA, ADVOCATE,
FOR RESPONDENT NO.1.

ASHUTOSH MOHUNTA, J.

The prayer made in this petition is to the issuance of a writ in the nature of certiorari quashing order dated 9.5.2003 (Annexure P7) passed by the Estate Officer (respondent No.2) and the judgment dated 15.6.2004 (Annexure P9) passed by the Additional District Judge, Rupnagar, as well as issuance of a writ in the nature of mandamus directing respondent No.1 to vacate the quarter in dispute.

A lease agreement dated 5.7.1976 (Annexure P1) by the Bhakra Beas Management Board (for short 'the Board') was executed in favour of Jagdish Chander (respondent No.1) (for short 'the lessee') in respect of quarter No.16-E at Nangal Township for residential purposes for a period of one year. As per Clause 4 thereof, the lease could continue even after the expiry of the stipulated period of one year by mutual consent of the parties

concerned on the mutually agreed terms and conditions. A proviso was added thereto that after the expiration of the first year, the lease shall be deemed to be from year to year basis. Clause 8 of the agreement provided for termination of the agreement even before the expiration of the original period of one year of lease by the lessor-Board by giving one month's notice in writing to the lessee. The petitioner issued notice dated 19.2.1990 under Clauses 8 and 4 of the agreement calling upon respondent No.1 to vacate the quarter in question as the same was required by the Board due to –

1. acute shortage of residential accommodation for its own employees, who had to wait for nearly 5-10 years for allotment of status accommodation;

2. that the public premises were required for public purpose.

When respondent No.1 did not vacate the premises in dispute, the Board filed a pertition him before the Estate Officer (respondent No.2) under the Public premises (Eviction of Unauthorized Occupants) Act, 1971 (for short ('the Act') for his eviction and for recovery of an amount of Rs.1255.80 being rent outstanding upto 30.9.1991 and thereafter damages at the rate of Rs.119.60 per month till final vacation of the premises. After respondent No.1 failed to lead any evidence for a long period, the Estate Officer directed the Board to lead its evidence. After recording evidence led by the petitioner and hearing arguments from both the sides, the Estate Officer dismissed the petition filed by the Board vide order dated 9.5.2003 (Annexure P7) on the ground that the eviction proceedings against

respondent No.1 under the Act were barred under guidelines dated 14.1.1992 (Annexure P6) of the Ministry of Urban Development, Government of India. The appeal filed by the petitioner-Board has been dismissed by the Additional District Judge, Rupnagar vide judgment dated 15.6.2004 (Annexure P9). Now the Board has filed the present petition impugning the order dated 9.5.2003 (Annexure P7) passed by the Estate Officer (respondent No.2) as well as the judgment dated 15.6.2004 (Annexure P9) passed by the Additional District Judge, Rupnagar (respondent No.3).

Respondent No.1 filed written statement wherein the contentions made in the writ petition have vehemently been controverted and the primary contention is to the effect that the Board could not seek eviction of respondent No.1 under the Act in view of the guidelines issued by the Union of India dated 14.1.1992 (Annexure P6).

Sh. D.S. Nehra, learned Sr. Advocate, counsel for the petitioner has vehemently argued that as per Clause 8 of the Lease Deed, the Board was authorized to terminate the lease by giving one month's notice to respondent No.1 i.e., the lessee. It has been argued that the premises in question were required by the petitioner-Board for the public purpose namely to accommodate their employees. Learned counsel has contended that once the lease deed stood terminated then respondent No.1 was duty bound to vacate the same and in the event of not vacating the premises, the Estate Officer as well as the Addl. District Judge ought to have allowed the petition filed by the petitioner and should have ordered the eviction of respondent No.1.

It was next argued by Sh. Nehra, that Internal Instructions of

Ministry of Urban Development, Government of India dated 14.1.1992, which have been relied upon by the Courts below were neither an enactment not a Rule or Regulation and could not override the specific provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Learned counsel has relied on the judgement in *Ashoka Marketing Limited* vs. *Punjab National Bank*, AIR 1991 SC 855, wherein it has been held that the premises belonging to organizations like the petitioner-Board are public premises and can be got vacated under the provisions of Public Premises Act on termination of lease or licence and that the Internal Guidelines of the Ministry of Urban Development, Government of India cannot override the provisions of the Act.

Counsel for the respondents has, however, argued that there is nothing on record to show that there was any shortage of accommodation for the employees of the Board and thus, the issuance of notice of eviction was mala fide. It was contended that the notice was issued to get the premises vacated whereas, admittedly the petitioner has withdrawn petitions against various other similarly situated persons. It is contended that the petitioner has adopted a pick and choose method. Strong reliance has been placed on the Instructions of the Ministry of Urban Development, Government of India.

We have heard the counsel for the parties at length. The relevant Clause 4 & 8 of Lease Agreement dated 5.7.1976, Annexure P-1 are reproduced as under:-

> *"Clause 4. The lease shall commence on and from the 5.7.1976 and the rent for the first month shall be due and payable on the date. The lease is granted for a period of one*

year but if by mutual consent or forbearance, it shall be allowed to continue in force after the expiry of the said period of one yea, then subject to such modifications (if any) as the lessor and lessee may in writing mutually agree to the terms and conditions of this lease shall continue to operate and shall have full force and effect.

PROVIDED that in respect of any period after the expiration of the first year during which the lease shall continue in force, it shall be deemed to be a lease from year to year."

"Clause 8. Should the building, at any time before the expiration of the original period (one year) of this lease be required by the Lessor for any public purpose, he may, by giving to the lessee one month's notice in writing through the Executive Engineer, Determine this lease and the lessee shall, on expiration of the term of the notice peaceably vacate and give up possession of the building.

PROVIDED that upon such determination of the lease of the lease and peaceable surrender by the lessee of possession (but not otherwise) the Lessee shall be entitled to have refunded to him a proportionate part of any rent paid in advance for any unexpired period for which such rent has been paid.

PROVIDED further that the decision of the Superintending Engineer as to the amount of any refund to be awarded under this clause, shall be final and binding on the

parties."

As per Clause 8 of the Lease Deed the lesser, could by giving 1 month's notice in writing through the Executive Engineer terminate the lease. On expiration of the terms of the notice, the lessee was liable to vacate and give up the possession of the building. It is thus, clear that respondent No.1 was bound by the terms and conditions of lease and as notice had been issued by the Board on 25.5.1990, to respondent No.1 calling upon him to vacate the said quarter on account of the fact that there was acute shortage of residential accommodation for the Board's own employees who had to wait for nearly 5 to 10 years for allotment of accommodation, therefore, respondent No.1 was liable to vacate the said premises on expiry of the term of the notice. Respondent No.1 was bound by the terms and conditions of the Lease Deed and the Courts below ought to have ordered the eviction of the petitioner. Both the Courts below have given an undue weightage to the Instructions dated 14.1.1992, issued by the Ministry of Urban Development, Government of India. These Instructions were mere guidelines and could not override the provisions of the Public Premises Act. The petitioner was very well within its right to seek eviction of respondent No.1 as per terms and conditions of the Lease Deed. If a person is in illegal occupation, the Board has the right to terminate the lease by giving notice which was done in the present case and thus, they were entitled to take possession of the premises from respondent No.1. A perusal of the eviction petition clearly shows that eviction was not sought for any profit motive but the premises in dispute was required for allotting the same to the employees of the Board as there was shortage of residential accommodation.

It is, thus, clear that the premises was required by the petitioner

for a public purpose. We, therefore, hold that the Guidelines dated 14.1.1992, cannot override the provisions of the Public Premises Act, and the Board could seek eviction of a person who was in unauthorized occupation of its premises.

In view of the fact that the lease had been terminated by the petitioner-Board, therefore, after the termination of lease, respondent No.1 had become unauthorized occupant of the premises in dispute and therefore, the Estate Officer was clearly in error in not ordering his eviction from the demised premises. The appellate authority has also committed the same error, therefore, both the orders cannot be sustained in the eyes of law and accordingly, we quash the orders, Annexure P-7 passed by the Estate Officer and Annexure P-9, passed by the Addl. District Judge, Rupnagar and allow this writ petition. As the lease agreement stood cancelled in the year 1990 itself, therefore, after that respondent No.1 has no right to continue on the premises in question and he has become unauthorized occupant thereof and order that respondent No.1 be evicted from the premises in dispute. He is, therefore, directed to hand over the vacant possession of quarter No.5-V, Nangal Township within a period of 3 months from the date of receipt of certified copy of this order. There shall, however, be no order as to costs.

(ASHUTOSH MOHUNTA)
JUDGE

October 19, 2006
Gulati

(NIRMAL YADAV)
JUDGE